

SESSION ON
THE LAST
ICC OPINIONS

Opinion TA.881 - Query

Topic: Mixed Payment L/C, L/C amount: USD 100,000.00

Field 46A Required Documents:

- 1. Invoice
- 2. Bill of lading
- 3. Packing list
- 4. Insurance document
- 5. Acceptance certificate issued by the applicant

Field 47A: Additional Conditions:

- **Mixed Payment Details:**
- 80 pct of credit amount will be paid against presentation of documents from 1 to 4 in field 46A
- 20 pct of credit amount will be paid against presentation of acceptance certificate issued by the applicant or in case this document is not presented, at 45 days after B/L date (whichever occurs earlier).

Opinion TA.881 - Query

- Documents from 1 to 4 for USD 100,000 including a bill of lading dated 1 September 2016 were presented and found to be discrepant and are not yet accepted.

We would like to have an opinion of the ICC Banking Commission based on the following questions:

- **1.** Was the issuing bank obligated to pay 20% of the presentation amount to the beneficiary on 16 October 2016 (B/L date + 45 days), if the acceptance certificate was not presented?
- **2.** Was payment of the 20% subject to the drawing for 80% having been previously honoured or refused?
- **3.** Was the issuing bank obligated to pay the beneficiary 20% of the credit amount, against presentation of the acceptance certificate, without presentation of documents 1 to 4?

Opinion TA.881 - Analysis

- The provision for the automatic payment of 20%, i.e., 45 days from the bill of lading date, is only effective if the drawing for 80% has been honoured due to the fact that this is a single presentation with two possible tenors, 80% at sight and 20% as stated in the credit. It is considered unlikely that any bank, having refused the presentation for 80%, would then proceed to record a commitment to pay the 20% portion.
- The query indicates that the presentation was refused due to discrepancies and that the discrepancies were not waived. Accordingly, there has been no utilisation under the credit and, therefore, no bill of lading date to which any claim for payment of the 20% can be applied.

Opinion TA.881 - Analysis

- Until the discrepancies are accepted by the issuing bank (e.g., based upon a waiver from the applicant), the 80% and the 20% that could be payable at 45 days from the bill of lading date (an amount that would now be due for payment immediately) cannot be honoured.
- It should be noted that if the applicant had chosen to issue an acceptance certificate (however unlikely as it may be, given that the applicant had not waived the discrepancies for documents 1 to 4) and the document had been presented and was compliant, the issuing bank would be required to honour the 20%.
- This is a poorly drafted credit and, if a complying acceptance certificate had been presented prior to any presentation of documents 1 to 4, although compliant under the terms and conditions of the credit this may cause some concern to the applicable banks as to how the goods have been accepted without any presentation covering the shipment of those goods and as to the whereabouts of the documents that cover that shipment. This is, however, outside the scope of UCP 600.

Opinion TA.881 - Conclusion

- **1. No.** In the absence of an acceptance certificate, payment at 45 days from bill of lading date was subject to the 80% having previously been honoured.
- **2. Yes,** given that 20% was predicated upon the bill of lading date, payment was subject to the 80% having previously been honoured. The answer would be no if 20% was to be paid upon the presentation of the acceptance certificate.
- **3. Yes,** provided that presentation of the acceptance certificate is made prior to the expiry date of the credit. However, see the comments in paragraphs 5 and 6 of the Analysis.

Opinion TA.883 - Inquiry

- A credit, subject to UCP 600, required amongst others, one original air transport document (AWB) consigned to applicant showing flight number, flight date, contract number **TECH/TCT-562-17-APPLICANT/XYZ OY -XYZ VN-VNPT TECHNOLOGY**, L/C number, marked freight prepaid and notify applicant.
- The issuing bank refused to honour, stating the following two discrepancies:
 - 1. AWB showing inconsistent carrier's name (i.e., "Cargolux" and "Panalpina World Transport BV")
 - 2. AWB showing inconsistent contract number

Opinion TA.883 - Inquiry

- **The confirming bank disagreed** with the discrepancies raised by the issuing bank stating the following (in an MT799 message):
- “1. Information field showing “Cargolux” is by recognized practice intended for carrier use only. The party acting as carrier for the shipment is identified in the signature field of the document and fulfills the requirement of UCP 600 art 23 (a). There is no discrepancy relating to the identification of carrier.

Opinion TA.883 - Inquiry

- **The confirming bank disagreed** with the discrepancies raised by the issuing bank stating the following (in an MT799 message):
- 2 .The contract number is stated in good order as per credit terms on the AWB in the space relevant for containing this information. The parallel occurrence of essentially same contract not showing full lettering does not create inconsistency or uncertainty on the applicability of the stated full contract no and the document as representing the correct AWB, relating to the stipulated contract for the purpose of presentation under this credit.”

Opinion TA.883 - Inquiry

- The issuing bank maintained its position with the following arguments:
- “1. Our L/C is subject to UCP 600 in which no article stipulates that banks should not check information fields similar to the field showing “Cargolux” in your AWB. Moreover, art 14D of UCP 600 indicate clearly that data in document must not conflict with data in that document itself and the credit. The presented AWB mentioned two different carrier’s name (“Cargolux” and “Panalpina World Transport BV”) this made the AWB discrepant due to data confliction in itself.

Opinion TA.883 - Inquiry

- **The issuing bank maintained** its position with the following arguments:
- 2. Relating to contract no, the AWB also mentioned contract number twice. As recognized by your MT799, the contract number stated after invoice number obviously did not bear all letters as the other and in the credit. So, it constitutes a conflict data in the AWB itself and with L/C. In other words our discrepancy of inconsistent contract number is fully valid.”

Opinion TA.883 - Analysis

- The issuing bank contends that as Cargolux is mentioned in the “By First Carrier” field, this creates a conflict according to UCP 600 sub-article 14 (d).
- An air waybill that provides carrier details, in the manner described in the query, and within the boxes designated as “Issued by”, "By First Carrier" and/or the signing field would not be seen as being in conflict with the requirements of UCP 600 sub-article 23 (a) (i) in naming the carrier, i.e., a sole carrier. In this case, the party signing the air waybill has signed as carrier. Such a signature complies with the requirements of sub-article 23 (a) (i).
- The signature of either of the above-mentioned parties, or a named agent signing on either of their behalf, would be acceptable.

Opinion TA.883 - Analysis

- The issue of a potential conflict in the stated contract number, appearing in one or more presented documents, has been addressed in numerous ICC Opinions including, inter alia, TA856rev, R740 (TA722rev) and R757 (TA708rev). Within the air waybill, the contract number is mentioned in two different places. **One of these statements omitted to mention “OY -XYZ”.**
- As it was not previously mentioned as a discrepancy by the issuing bank, it can be assumed that the air waybill correctly stated the credit number, goods description, and quantities, etc. **Accordingly, it provided sufficient data from the credit to determine that the omission of “OY –XYZ” in one notation could be considered as a typographical error.** For this query, **in view of the fact that the correct contract number is also stated in the air waybill, the omission of “OY -XYZ” does not make the document discrepant.**

Shipper's Name and Address [REDACTED] FINLAND	Shipper's Account Number 130838	Not negotiable AMS 798039 Air Waybill ALPINA WORLD TRANSPORT BV Issued by AMSTERDAM AIRPORT HOLLAND AS CARRIER
Consignee's Name and Address [REDACTED] HANOI VIETNAM		Copies 1, 2 and 3 of this Air Waybill are originals and have the same validity. It is agreed that the goods described herein are accepted in apparent good order and condition (except as noted) for carriage SUBJECT TO THE CONDITIONS OF CONTRACT ON THE REVERSE HEREOF. ALL GOODS MAY BE CARRIED BY ANY OTHER MEANS INCLUDING ROAD OR ANY OTHER CARRIER UNLESS SPECIFIC CONTRARY INSTRUCTIONS ARE GIVEN HEREON BY THE SHIPPER, AND SHIPPER AGREES THAT THE SHIPMENT MAY BE CARRIED VIA INTERMEDIATE STOPPING PLACES WHICH THE CARRIER DEEMS APPROPRIATE. THE SHIPPER'S ATTENTION IS DRAWN TO THE NOTICE CONCERNING CARRIER'S LIMITATION OF LIABILITY. Shipper may increase such limitation of liability by declaring a higher value for carriage and paying a supplemental charge if required.
Issuing Carrier's Agent Name and City		Accounting Information: FILE: 791849 0000 SERVICE LEVEL 3 LOAD REF # VN-10032942 "FREIGHT PREPAID"

Agent's IATA Code 57470380015	Account No.	VOLUME 0.211 M3
Airport of Departure (Addr. of First Carrier) and Requested Routing AMS AMSTERDAM AIRPORT HOLLAND		Reference Number

To HAN CARGOLUX	By First Carrier Routing and Destination	to	by	to	by	Company EUR REX X	Declared Value for Carriage NVD	Declared Value for Customs NCV
Airport of Destination TAN SON NHAT**		Special Services CV7926/08		Amount of Insurance XXX		INSURANCE - If Carrier offers insurance, and such insurance is requested in accordance with conditions thereof, indicate amount to be insured in figures in box marked 'Amount of Insurance'.		

Handling Information: PIECE MARKED ADDRESS HAWB: AMS-798039		NOTIFY: [REDACTED]	
NL/RA00111-03/SPX/KC		[REDACTED] HANOI, VIETNAM X	

No of Pieces RCP	Gross Weight	Rate Class	Chargeable Weight	Rate / Charge	Total	Nature and Quantity of Goods (incl. Dimensions or Volume)
1	11.0K		35.5	AGREED	AS AGREED	TELECOMMUNICATION EQUIPMENT COMMODITY: HARDWARE, SOFTWARE, LTU, FEATURE BUILT IN HARDWARE AND SPARE PARTS FOR THE CONTRACT NO TECH/TCT-562-17- APPLICANT/XYZ OY XYZ VN-VNPT TECHNOLOGY DATED 6TH FEBRUARY 2017 UNDER THE PROCUREMENT PACKAGE 'PURCHASING OF 4G RAN B-LAC-00001'
**AIRPORT VIETNAM EQUIPMENT SOUTHERN 2' BELONG TO THE PROJECT' PURCHASING OF 4 G RAN EQUIPMENT FOR HO CHI MINH CITY AND CITIES IN THE SOUTH OF [REDACTED] NETWORK'; TRADE TERMS: PRICE IS TO BE UNDERSTOOD CIP TO INSTALLATIONS IN VIETNAM, IN TERMS 2010 SHIPMENT NR: 1118206211 INVOICE NR: 106067405 CONTRACT NR: TECH/TCT/-562-17- APPLICANT/XYZ VN VNPT TECHNOLOGY L/C NR: 00337101701821 DATE ISSUE: 170301 FLIGHT NR: CV7926/08 FLIGHT DATE 08/04/17	1	11.0K			AS AGREED	B-LAC-00001

Prepaid Weight Charge Collect Other Charges

Agent's IATA Code: 57470380015 Account No. VOLUME 0.211 M3

Airport of Departure (Addr. of First Carrier) and Requested Routing: AMS AMSTERDAM AIRPORT HOLLAND Reference Number: Optional Shipping Information:

To: My First Carrier: Routing and Destination: HAN CARGOLUX to by to by Currency: EUR PEX Other: X Declared Value for Carriage: NVD Declared Value for Customs: NCV

Airport of Destination: TAN SON NHAT** Speed/Type: CV7926/08 Amount of Insurance: XXX INSURANCE - If Carrier offers insurance, and such insurance is requested in accordance with conditions thereof, indicate amount to be insured in figures in box marked 'Amount of Insurance'.

Handling Information: PIECE MARKED ADDRESS NOTIFY: HAWB: AMS-798039

NL/RA00111-03/SPX/KC HANOI, VIETNAM X SO

No of Pieces RCP	Gross Weight	Rate Class	Commodity Item No.	Chargeable Weight	Rate / Charge	Total	Nature and Quantity of Goods (incl. Dimensions or Volume)
1	11.0K			35.5	AGREED	AS AGREED	TELECOMMUNICATION EQUIPMENT
**AIRPORT VIETNAM EQUIPMENT SOUTHERN 2' BELONG TO THE PROJECT' PURCHASING OF 4 G RAN EQUIPMENT FOR HO CHI MINH CITY AND CITIES IN THE SOUTH OF NETWORK; TRADE TERMS: PRICE IS TO BE UNDERSTOOD CIP TO INSTALLATIONS SITES IN VIETNAM, IN TERMS 2010 SHIPMENT NR: 1118206211 INVOICE NR: 106067405 CONTRACT NR: TECH/TCT/-562-17- -APPLICANT/XYZ VN VNPT TECHNOLOGY L/C NR: 00337101701821 DATE ISSUE: 170301 FLIGHT NR: CV7926/08 FLIGHT DATE 08/04/17 PURCHASING OF 4G RAN S_LAC-00001							
1	11.0K					AS AGREED	

Prepaid: AS AGREED Weight Charge: Collect Other Charges: Valuation Charge: Tax: Total Other Charges Due Agent: Total Other Charges Due Carrier:

Shipper certifies that the particulars on the face hereof are correct and that insofar as any part of the consignment contains dangerous goods, such part is properly described by name and is in proper condition for carriage by air according to the applicable Dangerous Goods Regulations. N 05 APR 17 13:16 BY NINA... FOR PANALPINA WORLD TRANSPORT BV Signature of Shipper or his Agent: Panalpina WT B.V. Rangoonweg 7 1118 LP Schiphol

Total Prepaid: AS AGREED Total Collect: PANALPINA WORLD TRANSPORT BV Signature of Testing Center or its Agent: Panalpina WT B.V. Rangoonweg 7 1118 LP Schiphol

Carrier's Charges: Charges to Consignor: Consignee's Charges: Charges to Consignee: Total Collect Charges: Excluded on (Date): at (Place): AMS Signature of Testing Center or its Agent:

Opinion TA.865 - Inquiry

- The credit, contained the following requirements under field 46A: + CUSTOMS EXPORT DECLARATION ISSUED AND AUTHENTICATED BY CUSTOMS AUTHORITIES IN THE EXPORTING COUNTRY CERTIFYING THAT GOODS SUBJECT OF THIS L/C BEING EXPORTED TO [Country L) PROVING ITS QUANTITY AND SPECIFICATIONS DETAILS.
- This documentary requirement was later amended as follows:
- PLEASE AMEND UNDER FIELD 46A (ITEM 6) TO READ:
- + A COPY AND/OR ORIGINAL CUSTOMS EXPORT DECLARATION ISSUED AND AUTHENTICATED BY CUSTOMS AUTHORITIES IN THE EXPORTING COUNTRY CERTIFYING THAT GOODS SUBJECT OF THIS L/C BEING EXPORTED TO [Country L) PROVING ITS QUANTITY AND SPECIFICATIONS DETAILS, TO BE ACCEPTED IN ANY LANGUAGE AND IT MUST BE CERTIFIED BY THE BENEFICIARY.

Opinion TA.865 - Inquiry

- Beneficiary presented documents that the second advising bank found to be complying and, upon which, it forwarded them to the confirming bank.
- Subsequently, a notice of refusal was received from the confirming bank stating:
- „CUSTOM EXPORT DECLARATIONS NOT AUTHENTICATED BY CUSTOMS AUTHORITIES AS REQUESTED“

Opinion TA.865 - Inquiry

- A copy of Customs export declaration was presented, as allowed after the amendment. It was an electronically generated document and therefore not signed by the customs authority. However, and as required by the amendment, it was certified by the beneficiary.
- It is the opinion of the second advising bank that the declaration need not be signed as it is a copy of an electronically generated document that bears no signature, and it is correctly certified by the beneficiary as required by the amendment.
- In many credits these days, we see a presentation of documents from entities such as Chambers of Commerce or Customs Authorities that have been generated electronically.
- Also in this case, the document presented was issued by the Country N Customs Authorities and showed a bar code MRN. This bar code, as was later confirmed by the Country N Customs Authorities, is the only authentication that will be provided. Country N Customs Authorities do not sign any of these documents.
- Our question is whether the discrepancy is valid or not?

Opinion TA.865 - Analysis

- A copy of the customs export declaration was presented, **contained no field for a conventional signature** and was signed by the beneficiary with the words “certified true and correct customs export declaration”.
- ISBP 745 paragraph A31 (b) reflects existing international standard banking practice when reviewing copies of documents i.e., “Copies of documents need not be signed nor dated.”
- **Even if it were considered that the copy of the Customs Export Declaration was to indicate a form of signature**, as would have appeared on the original, **the signing of a document can include an electronic method of authentication** (as stated in UCP 600 article 3). In ICC Opinion R636 (TA668rev), it was stated within the analysis that a bar code on a courier receipt could act as a form of signature (i.e., **an electronic method of authentication**) where there is no designated signature field within the document. **This highlighted the fact that neither the ICC nor UCP can dictate how issuers of documents should create or authenticate such documents.**

Opinion TA.865 - Analysis

The **MRN (Movement Reference Number)** that appears on the presented copy, and referenced in the text of the query, is a unique number that is automatically allocated by the customs office that accepts the declaration. It contains 18 digits and is composed of the following elements:

- **the last two digits of the year of formal acceptance of export movement;**
- **an identifier of the EU Member State(s) from which the movement originated; and**
- **a unique identifier for the export movement per year and country.**

The MRN is printed in full on the document and would be represented within the machine-readable data in the bar code to enable any authentication to occur. It should be noted that banks are not required to verify or obtain such authentication. **The inclusion of a bar code will be considered as an electronic form of authentication.**

For the avoidance of disputes, when it is known that a document will be presented bearing an electronic form of authentication, other than that described in ISBP 745 paragraph A35 (d), a credit subject to UCP 600 should be worded to reflect the required content of that document and the form of authentication (signature) that will be required or be acceptable.